



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

EPA-R09-OAR-2019-0693; FRL-10011-48-Region 9

Air Plan Approval; California; San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a revision to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD or “the District”) portion of the California State Implementation Plan (SIP). This revision concerns emissions of volatile organic compounds (VOCs), oxides of nitrogen (NO_x), and particulate matter (PM) from wood burning devices. We are approving a local rule that regulates these emission sources under the Clean Air Act (CAA or the Act).

DATES: This rule is effective [**Insert date 30 days after date of publication in the *Federal Register*.**].

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R09-OAR-2019-0693. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Rynda Kay, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 947-4118 or by email at kay.rynda@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us” and “our” refer to the EPA.

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I. Proposed Action

On January 9, 2020 (85 FR 1131), the EPA proposed to approve the following rule into the California SIP.

Local Agency	Rule #	Rule Title	Amended	Submitted
SJVUAPCD	4901	Wood Burning Fireplaces and Wood Burning Heaters	06/20/2019	07/22/2019

We proposed to approve this rule because we determined that it complies with the relevant CAA requirements. Our proposed action contains more information on the rule and our evaluation.

II. Public Comments and EPA Responses

The EPA’s proposed action provided a 30-day public comment period. During this period, we received comments on the proposal from Earthjustice on behalf of Central California

Asthma Collaborative and the National Parks Conservation Association (collectively “Earthjustice”). We also received nine anonymous comments on the proposal.

The comments submitted by Earthjustice pertain to whether Rule 4901 satisfies CAA requirements for most stringent measures (MSM) and best available control measures/best available control technology (BACM/BACT). At this time, we are not finalizing determinations on whether or not Rule 4901 meets the requirements for reasonably available control measures/reasonably available control technology (RACM/RACT), BACM/BACT, and MSM. Rather, we are finalizing an approval of Rule 4901 on the grounds that it meets the requirements for enforceability in CAA section 110(a)(2)(A) and the requirements for SIP revisions in CAA sections 110(l) and 193, for the reasons described in our proposal, technical support document (TSD), and this document. To the extent that determinations regarding RACM, BACM, and MSM requirements are necessary to support action on other SIP submittals, we will make final determinations on whether Rule 4901 satisfies those requirements in one or more separate rulemakings and will respond to Earthjustice’s comments in those rulemaking actions.

Summaries of the remaining comments are provided below, along with our responses to those comments.

Comment 1.a: The nine anonymous commenters generally expressed support for the proposed action. Certain comments mentioned issues outside the scope of the proposed action, such as global warming, open burning of agricultural waste, and providing inhalers for people with asthma. A few commenters raised questions related to the proposed action.

Response 1.a: We thank the commenters for their support and input. Our responses to the relevant questions follow.

Comment 1.b: One commenter asked, “[h]ow can the EPA provide aid at an individual

level to those who already have established fireplaces or chimneys?”

Response 1.b: SJVUAPCD provides funding for replacement of wood burning devices, including fireplaces, through its Burn Cleaner Program. Under the Targeted Airshed Grant program, the EPA has provided nearly \$5 million to change out approximately 5,800 uncertified wood burning devices with cleaner burning devices through grants to SJVUAPCD in 2015 and 2016.

Comment 1.c: A commenter asked, “how old wood burning devices will be regulated, and what the EPA can do to prevent individuals from using an expensive product they have already installed.”

Response 1.c.: As described in our proposal, Rule 4901 establishes requirements for the sale/transfer, operation, and installation of wood burning devices and for the advertising of wood for sale intended for burning in a wood burning fireplace, wood burning heater, or outdoor wood burning device within the San Joaquin Valley. Among other things, the rule limits the types of fuels that can be used in wood burning devices,¹ as well as the opacity of emissions from these devices.² In addition, the rule includes an episodic wood burning curtailment program, which restricts use of wood burning heaters (including old, uncertified heaters) and fireplaces on days where ambient particulate matter equal to less than 2.5 microns in diameter (PM_{2.5}) and/or particulate matter equal to or less than 10 microns in diameter (PM₁₀) concentrations are forecast to be above a specified curtailment threshold. Today’s action approving revisions to Rule 4901 into the SIP will make the revised rule enforceable by the EPA.

Comment 1.d: One commenter requested that the EPA itself take more specific actions to

¹ Rule 4901, section 5.6.

² Rule 4901 section 5.8.

reduce wood burning emissions in order to improve ambient air conditions.

Response 1.d: The EPA has authority to issue regulations to assist states indirectly with reduction of emissions from woodstoves. In 2015, the EPA revised the new source performance standard (NSPS) applicable to manufacturers of new wood burning devices, lowering the emissions limits for several types of devices.³ This action will result in reductions of wood burning emissions over time as older, uncertified heaters are replaced with new heaters certified under the revised NSPS. State and local regulators, such as SJVUAPCD, are then able to construct nonattainment plan control measures that rely on replacement of older stoves with new stoves with lower emissions. The EPA also works with communities to encourage cleaner home heating through the EPA Burn Wise and Advance outreach programs.⁴ These programs provide resources for state, tribal and local agencies to identify and implement cleaner home heating programs.

Comment 1.e: One commenter asked, “[d]o these same regulations apply to large companies and corporations as well? Should there be any sort of adjustment of this rule to enforce large businesses to follow the same regulations?” The commenter also asserted that, “[w]hile targeting family-owned wood burning fires might help marginally, large factories such as Amazon, Pacific Coast Producers, or Prima Fruit Packing are probably contributing way more to pollution than a family just trying to cook some smores in their backyard.”

Response 1.e: Residential wood burning is a significant source of direct PM_{2.5} emissions in the Valley, contributing an estimated 5.49 tons per day of winter average PM_{2.5} emissions as of 2020.⁵ Rule 4901 applies to manufacturers, sellers, and installers of wood burning devices, as

³ 80 FR 13672 (March 16, 2015).

⁴ www.epa.gov/burnwise and www.epa.gov/advance

⁵ 2018 Plan for the 1997, 2006, and 2012 PM_{2.5} Standards, adopted by the SJVUAPCD on November 15, 2018, C-

well as individuals who operate wood burning devices. Because residential wood burning is a significant source, SJVUAPCD must address it in the nonattainment plan for the San Joaquin Valley (SJV). The EPA agrees with the commenter that other sources also contribute to nonattainment in the SJV and that they require emission controls as well. Numerous other SJVUAPCD rules limit emissions from other large companies and corporations that operate major industrial sources including factories. The EPA notes that the controls for other source categories are not addressed in this rulemaking because it focuses only on Rule 4901.

Comment 1.f: One commenter stated that the “rule will not apply to other counties in the San Joaquin Valley” and questioned whether it should be extended to the other counties.

Response 1.f: As described in our proposal, Rule 4901 applies throughout the San Joaquin Valley PM_{2.5} nonattainment area, including both the hot-spot counties (Madera, Fresno, and the portion of Kern County that is within the San Joaquin Valley Air Basin) and the non-hot-spot counties (San Joaquin, Stanislaus, Merced, Kings, and Tulare).

Comment 1.g: One commenter noted “my concern is about whether or not some will follow the rule if their home's heat source depends on it or their business depends on it” and that “enforcement of this rule is something to take into consideration as well.”

Response 1.g: As described in our proposal, Rule 4901 section 5.7.4.2 exempts households from wood burning curtailment requirements where a wood burning fireplace or wood burning heater is the sole available source of heat. Regarding enforcement, we have evaluated Rule 4901’s enforceability and found that, “[t]he rule requirements and applicability are clear, and the monitoring, recordkeeping, reporting and other provisions sufficiently ensure that affected sources and regulators can evaluate and determine compliance with Rule 4901

consistently.”⁶ The 2019 Rule 4901 Staff Report also describes the extensive enforcement efforts undertaken by the District to enforce the curtailment requirements.⁷

III. EPA Action

The EPA has evaluated the comments on the proposed action summarized above. Based on this evaluation, the EPA has concluded that it is appropriate to finalize the approval of SJVUAPCD Rule 4901 as meeting the requirements of CAA section 110(a)(2)(A), 110(l), and 193. Therefore, as authorized in section 110(k)(3) of the Act, the EPA is fully approving this rule into the California SIP. As explained in section II, we are not finalizing determinations of whether or not Rule 4901 meets the requirements for RACM/RACT, BACM/BACT, and MSM at this time. To the extent that such determinations are necessary to support action on other SIP submittals, we will make those determinations in one or more separate rulemaking actions.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the SJVUAPCD rule described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents available through *www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the “**FOR FURTHER INFORMATION CONTACT**” section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies

⁶ 2019 Rule 4901 TSD, 5.

⁷ 2019 Rule 4901 Staff Report, 32-33.

with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the *Federal Register*]**. Filing a petition for reconsideration by the

Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 26, 2020.

John Busterud,
Regional Administrator,
Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for Part 52 continues to read as follows:

AUTHORITY: 42 U.S.C. 7401 *et seq.*

Subpart F – California

2. Section 52.220 is amended by adding paragraphs (c)(457)(i)(H)(2) and (c)(535) to read as follows:

§52.220 Identification of plan-in part.

*	*	*	*	*
(c)	*	*	*	
(457)	*	*	*	
(i)	*	*	*	
(H)	*	*	*	

(2) Previously approved on October 6, 2016 in paragraph (c)(457)(i)(H)(1) of this section and now deleted with replacement in (c)(535)(i)(A)(1), Rule 4901, “Wood Burning Fireplaces and Wood Burning Heaters,” amended on September 18, 2014.

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(535) A new regulation for the following APCD was submitted on July 22, 2019 by the Governor’s designee as an attachment to a letter dated July 19, 2019.

(i) Incorporation by reference.

(A) San Joaquin Valley Unified Air Pollution Control District.

(1) Rule 4901, “Wood Burning Fireplaces and Wood Burning Heaters,” amended on June 20, 2019.

(2) [Reserved]

(B) [Reserved]

(ii) [Reserved]

[FR Doc. 2020-14298 Filed: 7/21/2020 8:45 am; Publication Date: 7/22/2020]